Mysore Village Panchayats and Local Boards (Amendment Bill, 1963 Introduction.

Sri RAMAKRISHNA HEGDE (Minister for Co-operation and Development).—Sir, I beg to introduce the Mysore Village Panchayats and Local Boards (Amendment) Bill, 1963.

Mr. SPEAKER.—The Mysore Village Panchayats and Local Boards (Amendment) Bill, 1963 is introduced.

Mysore Court Fees and Suits valuation (Amendment) Bill, 1963.

Motion to Consider—Debate Continued.

Sri K. S. SURYANARAYANA RAO (Mysore City).—Sir, other day I just took five minutes and I may not take much time and the Chair may kindly give me one or two minutes if I exceeded the time.

Sri C. J. MUCKANNAPPA (Sira).—Sir, the other day the Chair told us that Kondajji Basappa's Report would be taken up and now the Village Panchayats and Local Boards Bill is introduced.

Mr. SPEAKER.—This is not based on that ; I will, anyway, look into it.

Sri K. S. SURYANARAYANA RAO.—Sir, I was referring to section 5, amendment to section 63. My friend Sri M. R. Patil laid stress on the word 'delay'. Sir, if we take the word delay and proceed with that clause and consider the question of presentation, then certain consequences follow. Here, delay refers to two categories of cases. It may be under the limitation Act being barred by time. The other case is where the time is fixed but the implementation that is asked for or expected of either of the plantiff or the appellant has not been done. Then the question of delay comes up. Sir, section 148 of the Civil Procedure Code refers to the question of extension of time, enlargement of time. The point here is, the delay is of two kinds. The delay is in matters of limitation where the suit is filled beyond the time of limitation Act or under the several provisions of the different enactments. Then the question of delay is only the delay in implementing certain directions of the court. So, it is only in case where there is delay on the part of the plaintiff or appellant in matters of attending to the demands of the court, the question of delay comes. In other cases, it cannot be a question of representation. I find there is only one provision under which representation could come, that is under order 7, rules 10 and 11.

Mr. SPEAKER.—In his long experience in practice, he must have found that an endorsement is made on the page of the plaint in the margin about the defects as 1, 2, 3 and so on, to be remedied, and to be represented in a week.

Sri K. S. SURYANARAYANA RAO.—I am only sorry that is exactly my difficulty that I have not been able to overcome.

Mr. SPEAKER.—Has he not found this in his experience till now ?

Sri K. S. SURYANARAYANA RAO.—No, Sir. We follow the Civil Procedure. After the plaint is submitted to the court, the court will scrutinise it and post it for hearing if there are many defects.

Mr. SPEAKER.—To be heard means where ?

Sri K. S. SURYANARAYANA RAO.—It is normally in the open court. So, the normal procedure is, wherever objections are taken to the memorandum of appeal or to the plaint presented, the party that has to attend to it is either called to the office or called into the court and asked to amend the plaint according to the directions of the court. What I said was, amend the plaint as per the directions of the Court. If at that stage, the party is able to convince the Court that an amendment of the plaint is not necessary then the case proceeds. Otherwise, the suggestions of the Court or the directions of the court will be implemented and the case proceeds.

The question of returning the plaint comes up only under Order 7 rule 11, where it is definitely said that it is only in cases where the plaint is filed in a court which has no jurisdiction that the plaint may be returned at any stage to be re-presented at the appropriate court. If we accept the word 're-presentation', then we would be restricting the scope of the section and the classes of cases coming under order 7 rule 11. As it is, the scope of the section is wide enough even to include cases that come under order 7.

Mr. SPEAKER.—Does Hon'ble Member intrepret the word "re-presentation" to mean "re-presentation" to another court ?

Sri K. S. SURYANARAYANA RAO.—It cannot be to the same court. Those are cases where the party withdraws the suit and with the permission to file a fresh suit.

Mr. SPEAKER.—Filing a fresh suit is not re-presentation. In that case it is a plaint that is returned. It is withdrawal of a suit and the filing of a fresh suit.

Sri K. S. SURYANARAYANA RAO.—Therefore the question of re-presentation does not arise in any case. It comes only in one circumstance, that is under rule 7 order 11, that is, for want of jurisdiction. I feel that even if the word is a typographical error in the original act, that was good enough and needs no change. If we substitute the word with 're-presentation' then that would be restricting the scope of the section to a small range of cases. In the interest of justice it is necessary and equitable to have the scope as large as possible, without entrenching anybody's rights.

I will pose the question. Supposing the time is fixed for payment of deficient court fee or something like that and it is not paid and the suit is rejected. That is a case covered under this section. There also it would not be a case of re-presentation. It is a question of revision or review of the orders of the court in its discretion under 148. The court has ample powers to extend the time if the deficiency is not made up within the time fixed.

Mr. SPEAKER.—We are not concerned with the powers of the Court. We are dealing with the fees under the Court Fees Act.

Sri K. S. SURYANARAYANA RAO.—We are providing for refund of court fee under certain circumstances. This type of cases cannot also be re-presentation. At best it can be representation and not 're-presentation'. I believe that the section as it is in order.

So far as the other provisions are concerned, I would only say that since it is a matter which enhances the revenues of the State, the normal practice of appending a Financial Memorandum should have been followed. Incidentally, I presume that the Governor's certificate has been obtained for this purpose. I support the other amendments in the section.

Sri KADIDAL MANJAPPA (Sringeri).—The word 'presentation' and the amendment proposed, that is, 're-presentation' have given a little headache. Order 7 Rule 10 deals with cases where a plaint is returned for presentation to a proper court. The next is rule 11 which deals with rejection, if there is no cause of action or when the relief is not properly valued or if there is insufficient stamp or when it is barred by limitation. It is a case of rejection. In practice, certain memorandums of appeal and plaints are returned to the party.

Mr. SPEAKER.—Sri Suryanarayana Rao says that they are never returned.

Sri KADIDAL MANJAPPA.—They are returned by the High Court. That is my experience. They are returned with the direction to make certain corrections and that it should be re-presented within a certain time. That is done under the inherent powers of the Court vested under Section 151. So, perhaps, to cover such cases, the Law Minister wants to introduce the word "re-presentation". I am inclined to agree with my friend, Mr. G. V. Gowda, who has tabled an amendment in this connection. He wants to introduce both the words "presentation" and "re-presentation". I think that would meet the requirements.

With these few words, I thank you Sir.

†**Sri M. V. RAMA RAO** (Minister for Law).—Sir, in regard to the substitution of the word "re-presentation" for the word "presentation", found in Section 63 of the Court fees and Suits Valuation Act, I should like to explain why the amendment is necessary. The section, as it now stands, would allow a claim for refund of the entire Court fee paid on a plaint if the plaint has been rejected on the ground of delay. It is necessary for us to know the exact meaning of the word "delay", whether the expression "delay" has any connotation under the Limitation Act or whether it has any lesser significance. It is known to every practitioner of law that a plaint, which is on the face of it, barred by time would be summarily rejected or would be liable to summary rejection.

Mr. SPEAKER.—Who will reject it ?

Sri M. V. RAMA RAO.—The Court.

Mr. SPEAKER.—Is it the Executive Officer ?

Sri M. V. RAMA RAO.—Not the Executive officer. The chief ministerial officer of the Court, I imagine, would not be in a position to dismiss a suit. He would be in a position to make any correction or modification required to be made, if they are considered necessary, and for that purpose time may be granted. I shall deal with it later.

As I was saying, the rejection of a plaint on the ground that the claim is time barred, would amount to dismissal of suit. In such cases, refund of court fee would be permissible under the law as it stands. Section 63 of the Court Fees and Suits Valuation Act, which makes use of the word 'delay', has been taken from, is on the analogy, the law as it prevails in the neighbouring States of Madras and Andhra Pradesh. Therefore, the word "re-presentation" has been well understood and finds a reference in the rules of practice issued by these States. In our own State, for instance, the High Court Rules of Practice make provision for this "re-presentation". I shall, for the information of the Hon'ble Members, who have expressed a certain amount of surprise at the proposal to introduce this word, read Rule 14 of Chapter XII of the High Court of Mysore Rules issued in 1959. This is what it says :

> "(1) The Registrar after reading the report of the Examiner and looking into the papers examined wherever necessary shall, if all the papers are in order, direct that the appeal petition or other matter be admitted to register and numbered. If there are any defects, the Registrar shall direct such amendments or corrections in the papers as may be necessary, be carried out or direct that the papers be returned to the party presenting the same or his Advocate for rectification of the defects or for compliance with such requisitions as he may consider necessary in the circumstances of the case, fixing the time or period within which the papers should be re-presented after rectification of defects and compliance with the requisitions. The Registrar may, from time to time, extend the time or period allowed by him for representation of papers by such period or periods as may be necessary not exceeding six weeks in the aggregate.
>
> (2) A list of papers directed to be returned shall be put up on the Notice Board giving the particulars of the same and name of party presenting the same or his Advocate. The time fixed by the Registrar for representation shall be counted from the date on which the list is so put up on the Notice Board."

This is, in fact, an existing provision and similar provision is also sought to be made in the Civil Rules of Practice, which the High Court have made applicable to the other subordinate Civil Courts in the State. The analogous provision in fact, has been published in the Gazette

inviting objections from the litigant public or from members of the Bar. As a matter of fact, these rules have been published—The Civil Rules of Practice 1963 have been published—as long ago as on May 23, 1963. It is a notification dated 24th April 1963 issued by the High Court. There, Rule 15 of the Civil Rules of Practice provide:

> "(i) No pleading shall be filed in any court until all requirements of the code and these rules and other law governing the same have been complied with.
>
> (ii) All pleadings which are for any reason defective shall be returned for rectification and no action in respect of them by way of numbering or admissions shall be taken nor any order granting any relief to the party presenting them shall be made until all defects are removed or rectified.
>
> (iii) The Officer making the examination should refer the matter to the Presiding Officer of the Court, if he thinks the plaint should be returned for amendment, or be returned for presentation to the proper Court, or be rejected, because it does not disclose a cause of action or appears to be barred by law or is undervalued or insufficiently stamped or for any other reason."

Therefore, the use of the word "representation" is justified, and as I explained on the other occasion, on the previous day, the use of the word "presentation" would lead to other difficulties as well. It would make it appear that notwithstanding the plaint is barred by time, the entire court fee paid on it is liable to be refunded if such a plaint has been rejected. The references that the Hon'ble Member, Mr. K. S. Surayanarayana Rao made to Sections 148 and 149 of the Code of Civil Procedure are quite proper. The Court does possess the power under this Section, either to direct that corrections be made or modifications or amendments be made or that deficient court fee may be made up to the extent to which court fee is deficient should be made up. For these purposes, the Court is entitled not merely to grant time, but if it considers necessary, to return the plaint or the appeal memo to the party or to the Advocate directing him to make such modifications as he thinks necessary and indicating the time within which these modifications should be made; and if there is a delay within the time allowed by the Courts either allowed by law or granted by the Court, if these provisions have not been fulfilled and there is delay, and if such a plaint is rejected or the appeal is rejected, then the entire court fee is refundable. Therefore, I submit that the proposal contained in Clause 5 of this amending Bill may be accepted as it seeks to provide for making.....

Mr. SPEAKER.—Not at this stage;

Sri M. V. RAMA RAO.—I mean that the amendment proposed to Section 63 in Clause 5 is justified and there does not appear to be any reason why exception should be taken to it.

2-30 P. M.

Sri KADIDAL MANJAPPA.—When we are providing for the refund of court-fee in cases where there is delay in representation, is it not reasonable to provide for such concessions in the case of presentation when there is delay in presentation ?

Mr. SPEAKER.—Has it been there before ? Let us forget this Act, because courts had been functioning even before this Act was passed. Was it there before ?

Sri KADIDAL MANJAPPA.—No, Sir.

Mr. SPEAKER.—But I understand, there is equity in it. We will deal with it when we deal with the amendment. Now I will put the consi deration motion.

The question is :

"That the Mysore Court-Fees and Suits Valuation (Amendment) Bill, 1963 be taken into consideration."

The motion was adopted.

CLAUSE 2

Mr. SPEAKER.—There is no amendment. The question is :

"That clause 2 stand part of the Bill."

The motion was adopted.

Clause 2 was added to the Bill.

CLAUSE 3

Mr. SPEAKER.—There are two amendments. The Hon'ble Minister for Law may move his amendment. And then there is an amendment by Sri Gowda who is not here.

Sri M. V. RAMA RAO.—Sir, I move :

"That in clause 3 after the words 'acted on' the words 'at the instance of' be added."

Mr. SPEAKER.—Amendment moved :

"That in clause 3 after the words 'acted on' the words 'at the instance of' be inserted."

I do not think that there is any need to explain this. I will put the amendment.

The question is :

"That in clause 3 after the words 'acted on' the words 'at the instance of' shall be inserted."

The amendment was adopted.

Mr. SPEAKER.—The Amendment of Sri Gowda is not moved. The Member is absent. I will put the clause as amended. The question is :

"That clause 3 as amended stand part of the Bill."

The motion was adopted.

Clause 3 as amended, was added to the Bill.

CLAUSE 4.

Mr. SPEAKER—There is no amendment.

The question is :

"That clause 4 stand part of the Bill."

The motion was adopted.

Clause 4 was added to the Bill.

CLAUSE 5

Mr. SPEAKER—Sri Gowda is absent. His amendment is not moved. I put the clause.

Sri KADIDAL MANJAPPA.—In the main clause the headline is : 'refund in cases of delay in presentation of the plaint' ; now the word is 'representation' which is proposed to be substituted.

Mr. SPEAKER.—The Hon'ble Member is aware that the Heading of the clause is not of such great importance. I will amend it myself.

Sri KADIDAL MANJAPPA.—I know, Sir.

† Sri M. V. RAMA RAO.—The point raised by the Hon'ble Member Sri Kadidal Manjappa raises an issue. In regard to it, we can take no action. If I understand him aright, he suggested that provision should be made for refund of court-fees paid on plaints even though they have been presented beyond the period fixed by the law of limitation...

Mr. SPEAKER.—The court does nothing.

Sri M. V. RAMA RAO.—Section 3 of the Limitation Act which was passed recently by Parliament provides that a suit which has been instituted beyond the period of limitation shall be dismissed. Exception is made in the case of an appeal for refund of half the court-fee where the appeal has been presented beyond the time, it is perhaps with reference to the practice that is prevailing in all the High Courts for a considerable time...

Mr. SPEAKER.—Not in all the High Courts. It is more in Mysore in cases of compromises and rejections, court-fee concessions were given.

Sri M. V. RAMA RAO.—Yes, Sir, in some of the High Courts. In the case of dismissal of a suit by the rejection of a plaint as being time-barred, the question of refund of court-fee would, in my opinion, be not a thing which ought to be provided in the Court-fee and Suits Valuation Act.

Mr. SPEAKER.—The question is :

"That clause 5 stand part of the Bill."

The motion was adopted.

Clause 5 was added to the Bill.

CLAUSE 6

Sri M. V. RAMA RAO.—Sir, I beg to move :

"That in clause 6 after the words 'acted on' the words 'at the instance of' shall be inserted."

Mr. SPEAKER.—Amendment moved :

"That in clause 6 after the words 'acted on' the words 'at the instance of' shall be inserted."

Sri M. V. RAMA RAO.—There is no need for me to say anything in this regard, Sir.

Mr. SPEAKER.—I will put the amendment. The question is :

That in clause 6 after the words 'acted on' the words 'at the instance of' shall be inserted.

The amendment was adopted.

Mr. SPEAKER.—I will put the clause, as amended. The question is "That clause 6, as amended, stand part of the Bill. "

The motion was adopted.

Clause 6, as amended was added to the Bill.

CLAUSES 7 to 9

Mr. SPEAKER.—There are no amendments to clauses 7, 8 and 9 The question is:

"That clauses 7 to 9 both inclusive stand part of the Bill.

The motion was adopted.

Clauses 7 to 9 both inclusive were added to the Bill.

CLAUSE 10

Mr. SPEAKER.—The first amendment is by the Hon'ble Minister.

Sri M. V. RAMA RAO.— Sir, I move :

"That in clause 10, in sub-item (ii) of item (2) the word "panchayat " shall be deleted.

Mr. SPEAKER.—Amendment moved.

"That in clause 10, in sub-item (ii) of item (2) the word "panchayat" shall be deleted.

†Sri M. V. RAMA RAO.—Sir, it is really not necessary to say anything except that this deletion has been proposed because it has been represented that it might cause hardship to persons who may be required to find court-fee stamp in villages where court-fee stamps may not be readily available. Therefore it is proposed to delete this word.

Mr. SPEAKER.—I will put the amendment. The question is:

"That in clause 10 in sub-item (ii) of item (2) the word panchayat" shall be deleted.

The amendment was adopted.

Mr. SPEAKER.—Now the clause as amended. The question is:

"That clause 10, as amended stand part of the Bill."

The motion was adopted

Clause 10, as amended, was added to the Bill.

Mr. SPEAKER.—The question is:

"That clause 1, the Title and the Preamble stand part of the Bill".

The motion was adopted

Clause 1, the Title and the Preamble were added to the Bill

Motion to pass.

Sri M. V. RAMA RAO.—Sir, I beg to move:

"That the Mysore Court-fees and Suits Valuation (Amendment) Bill, 1963 as amended be passed."

Mr. SPEAKER.—The question is:

"That the Mysore Court-fees and Suits Valuation (Amendment) Bill, 1963 as amended be passed."

The motion was passed.

BOMBAY AGRICULTURAL PRODUCE MARKETS (MYSORE AMENDMENT) BILL, 1963

Motion to consider.

Sri RAMAKRISHNA HEGDE (Minister for Co-operation and Development).—Sir, I beg to move:

"That the Bombay Agricultural Produce Markets (Mysore Amendment) Bill, 1963 be taken into consideration.

Mr. SPEAKER.—Motion moved:

"That the Bombay Agricultural Produce Markets (Mysore Amendment) Bill 1963 be taken into consideration."